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The President communicated an invitation from Mr. Gray to the Society, to hold a special meeting at his residence, on Thursday evening next.

HON. LEVI LINCOLN, of Worcester, and Dr. JOSEPH PALMER, of Boston, were elected Resident Members.

SPECIAL MEETING.

A special meeting of the Society was held at the house of Hon. John C. Gray, Summer Street, this evening, the 20th of January. The President took the chair at seven and a half o'clock.

In a few appropriate remarks, Mr. WINTHROP announced the decease of Lemuel Shattuck, — the ninth on our list of members, — and nominated Mr. Felt to prepare the customary Memoir for the Society's Collections.

He then added, that possibly the antiquaries among our number might remember that Governor Winthrop's birthday was on the 22d; he having been born on the 12th of January, 1588, new style.

Thus, within the same week, were comprised the birthday anniversaries of at least three of the men who had been hardly second to any other in three of the great periods of New-England history, — the colonial, the revolutionary, and the constitutional.

Mr. Winthrop remarked, that he had been led to think of his ancestor's birthday from the fact that Cotton Mather, or his printer, had given a false date in the

“Magnalia,” substituting June for January; and that, not long ago, one of our illustrated papers had taken this date for commemorating the governor by a portrait and a biographical sketch. In looking over some old family papers, he had found reason for believing that the governor was not born, as has usually been stated, at Groton, but at Edwardston, a little town between Groton and Sudbury, where his mother, Agnes Brown, had lived before her marriage, and where she was paying a visit to her parents at the time of her confinement.

At the instance of Mr. Winthrop, the unanimous consent of the Society was given to Mr. Everett to take from the library the “Tithes-book of the Parish of Ecton.”

Mr. BOWDITCH presented to the Society a watch found on the person of Colonel Ebenezer Francis, who was killed at the battle of Hubbardston, A.D. 1777; also a copy of “Anburey’s Travels,” in two volumes, containing an account of the circumstances under which the watch came into the possession of the family of Colonel Francis, — gifts to the cabinet and library from Mrs. Elizabeth B. Bowditch and Mrs. Sarah Ellen Mason, grand-daughters of Colonel Francis.

On motion of Mr. CLIFFORD, *Voted*, That the thanks of this Society be respectfully tendered to Mrs. Bowditch and Mrs. Mason for the precious relic of their patriotic ancestor which they have generously given to the Society’s cabinet, and for the interesting volumes accompanying it which they have contributed to the library.

Mr. WARREN communicated the following paper upon the subject of Washington’s dress, and the

origin of the buff and blue uniform of the Revolutionary Army:—

Much curiosity has been excited in regard to the origin of the uniform of the Continental Army,—the famous blue and buff; and many inquiries have been made, with very partial success, as to the time when it was first adopted as a military dress. It does not appear that this dress has ever been worn by any portion of the British Army. Cannon, in his “Historical Record of the British Army,” says, “‘Buff,’ says Winslow, ‘is so called, because it hath some likeness with the buffle, or buffalo. Buffskin is a leather prepared from the skin of the buffalo, of which buff is a contraction. The third regiment of foot, formerly designated the Holland regiment, obtained a title from the color of their clothing. The men’s coats were lined or faced with buff. They also wore buff waistcoats, buff breeches, and buff stockings, and were emphatically styled the Buffs.’”

Cannon describes them as raised in 1572 for service in the Netherlands, and placed on the English establishment in 1665.

The thirty-first regiment in the English Army was raised in 1702, was dressed in the same manner, and styled the “Young Buffs.”

It will be perceived that nothing is said here in regard to the color of the coats; and although inquiries have been made in England, by my request, through the kindness of our Corresponding Member, William Durrant Cooper, Esq., it cannot be made certain, by reference to any record or regulation, what that color was.

It appears, however, by a plate of the battle of Malplaquet (11th September, 1709), that the third regiment (before referred to) are represented as in *red* coats, with buff facings, breeches, &c.

In the reign of Anne, *scarlet* and blue were definitely fixed upon as the uniform of the British Army.

It would seem certain, therefore, that our Revolutionary uniform was not copied from the British Army.

In a plate of the battle of Nieuport (1600), the *Spaniards* are represented as in *buff*, slashed with *light blue*.

When, and under what circumstances, then, was the "buff and blue" introduced in this country?

The earliest mention that I have been able to find, after extensive inquiry and research, is in a book published by J. F. D. Smyth, Esq., in London, in 1784. It appears that this Mr. Smyth resided in Virginia before and in the early periods of the Revolution; was a Tory; left Virginia, and was afterwards a captain in the British Army. In that book is this passage: "It was at Alexandria [where the author then was] where George Washington first stepped forth as the public patron and leader of sedition and revolt; having subscribed fifty pounds for these purposes where others subscribed five, and having accepted the command of the first armed associators against British government, which he had clothed in *his old uniform of the Virginia regiment last war; viz., blue and buff.*"

As Mr. Smyth was speaking of matters falling under his own observation, in reference to which there could be no possible reason for misrepresentation (it being then of no consequence what the dress of Washington and his men was), I think the fact is established, that, in the war of 1756-63, the Virginia regiment was dressed in blue and buff.

I learn, through George W. Randolph, Esq., of Richmond, that no statute or regulation can be found in Virginia, of any date, prescribing the dress of their troops. This is the fact, also, in regard to Massachusetts. The probability is strong, I think, that each Colony, and perhaps each regiment, adopted such uniform as suited their own taste or inclination.

In the portrait of Washington painted in 1772, and now at Arlington, he is *not* represented as in buff and blue, but, as Mr. Custis says in a letter to George Livermore, Esq., "attired

in the Provincial uniform of the Colonial forces of Great Britain." The dress, it would seem, then, had been changed at some time after the war of 1756; and the truth may be, that when Washington, in the spring of 1775, "stepped forth as the public patron and leader of sedition and revolt," he preferred the dress of the olden time to that which more distinctly marked the domination of the British Government. He came to Cambridge in July, 1775; and Thacher, in his "Military Journal," says that he saw him on July 20, and that "his dress was a blue coat, with buff-colored facings, buff under-dress," &c.

The next we hear of this uniform is in New York, where (after the above date), at the instance of Schuyler, an artillery company was formed, "the uniform to be blue and buff;" "which," Mr. John C. Hamilton says, "is supposed to be the first official designation of a uniform in this country." There can be little doubt, I think, that this uniform was adopted because it was Washington's; that Washington adopted it because it was his "old uniform;" and that thus its use became universal, and it was established as the uniform of the army.

There is another circumstance relating to Washington's dress, which has given occasion to a good deal of speculation and discussion.

When Colonel Laurens was captured on his passage to Holland, in 1780, he had with him a portrait of Washington, intended for the stadtholder. The capture was made by Captain Keppel, a nephew of Admiral Lord Keppel; and he presented it to his uncle, the admiral. This portrait is now at Quidenham, Lord Albemarle's seat in Norfolk. The Hon. and Rev. Thomas Keppel, in his "Life of Admiral Keppel," speaks of it, and is very much perplexed by the representation of a *blue ribbon* worn across the breast. As Washington belonged to no order of nobility, and as there was no society existing at that time in America of which this was the badge, he cannot account for its presence.

The admiral's biographer says, "Washington himself is represented as leaning with one hand upon a cannon. He is dressed in a uniform of blue and buff; a broad ribbon of garter-blue is over his right shoulder; and at his feet is a banner, which denotes that the badge was that of the Order of the Cincinnati. . . . Washington is here represented, in the year 1780, as decorated with the badge of the Cincinnati; whereas the order itself is supposed not to have had any existence until nearly four years subsequent to this period, and the badge in which Washington is drawn is said never to have been worn in America."

So a Hessian officer, writing after the surrender of Burgoyne, says, "The brigadiers and generals [of the American Army] are wearing particularly uniforms, and ribbons lying over the waistcoats in the fashion in which ribbons with orders are used."

So a recent writer in the "National Intelligencer" says, "How does it happen that the portrait of Washington, painted by C. W. Peale for Louis XVI., and sent to France, and which is now in the National Gallery of the Patent Office, represents him with a badge of a Marshal of France? It may be that the broad ribbon of this picture indicates no such rank; and, if not, what does it mean?" The ribbon spoken of by this writer is represented as *a blue ribbon, worn across the breast, between the coat and waistcoat.*

All this is explained by reference to the Orderly-book of Major William R. Lee, of the twenty-first regiment, Continental Army (deposited in our library, with his two commissions as Major and Colonel, by his grandson, William Raymond Lee, Esq.), in which the following order is found:—

"July 14, 1775 [twelve days after Washington assumed the command at Cambridge]. *General Orders.*—It is recommended both to officers and men to make themselves acquainted with the persons of all the general officers. And in the mean time, to prevent mis-

takes, the general officers and the aides-de-camp will be distinguished in the following manner: viz., the commander-in-chief, *by a light-blue ribbon, worn across his breast, between his coat and vest*; the major and brigadier generals, by a pink ribbon worn in like manner; the aides-de-camp, by a green ribbon."

It appears by the above extract from the "National Intelligencer," that the old story of Washington's having been a Marshal of France is revived upon the strength of the blue ribbon represented in the portrait at the Patent Office. This is a somewhat slender foundation, as a blue ribbon *is not a badge of a Marshal of France*, and as its presence is otherwise satisfactorily accounted for.

There is no evidence whatever, so far as I can learn, that Washington ever held such an appointment. No doubt, this belief was very generally entertained at one time. In Cary's "American Museum" for 1787, in the list of subscribers, we find, "George Washington, late Commander-in-Chief of the American forces, *Marshal of France*," &c.

A Mr. Lamont dedicated a volume of poems to Washington in 1784, and spoke of him as a *Marshal of France*.

Dr. Sparks says, that "this idea probably originated from the circumstance of his (Washington's) having commanded Count de Rochambeau." — *Sparks's Washington*, vol. ix. p. 89, note.

M. Vaillant, late French Minister at War, says, in answer to an inquiry from Mr. Walsh, that "no trace of a decree conferring on General Washington the dignity of a Marshal of France can be found in the archives of this ministry."

But the whole matter would seem to be disposed of by Washington himself, in a letter written to Mr. Lamont, quoted by Sparks (*ubi supra*); in which he says, under date of Jan. 31, 1785, "It behooves me to correct a mistake in your printed address to the patrons of the fine arts. *I am not a Marshal of France*, nor do I hold any office under that government or any other whatever."

All this is conclusive, unless an appointment was made of which there was no record, and unless Washington is to be suspected of equivocating upon the subject; that is, in saying that he was not a marshal in 1785, although he might have held the appointment at some former time.

The following paper on the early charters of Massachusetts was communicated by Mr. WASHBURN:—

*Transfer of the Colony Charter of 1628 from England to
Massachusetts.*

BY HON. EMORY WASHBURN.

Every one, who has studied the history of Massachusetts, must have remarked the importance which its early settlers attached to the possession of the instrument called the *Charter*, or *Patent*. They seemed to regard its presence as a kind of palladium, securing to them the enjoyment of their civil and religious rights, and without which they had no adequate guaranty of their permanency.

My object, in what I shall offer at this time, will be to show how strong this impression was in the minds of the early colonists; and to trace, as far as I may be able, the grounds upon which it rested.

It will be recollected, that in March, 1627, Sir Henry Roswell and others purchased of the Council of Plymouth the country between three miles north of the Merrimack and three miles south of the Charles Rivers, which gave them a right to the soil, but no powers of government (1 Hutch. 17).

The following March (1628), a royal charter was obtained through the intervention of Lord Dorchester, creating a corporation by the name of "the Governor and Company of the Massachusetts Bay in New England;" and twenty-six persons were named as patentees.

Duplicates of this charter were issued to the company, under the Great Seal; and the same was enrolled in chancery, and thereby made a matter of perpetual and public record.

I have neither space nor time to analyze the provisions of that charter. But no one can read it without being struck with three things: 1st, That a grant should have been made by Charles I., embracing so many elements of free government, if it was intended for any thing more than a trading corporation; 2d, The singular, and, if intended, the adroit, omission of every thing in its terms tending to give it any fixed locality; and, 3d, The meagreness of the powers it confers, if it was contemplated to be the constitution of government of a distinct and distant Colony.

The company organized under it in May, 1628.

In conformity with what had been the ostensible design of the company, Endicott was sent out to commence a plantation at Salem; and arrived there in September, 1628.

On the 17th of April, 1629, they sent to him, by the hands of Mr. Sharpe, one of the duplicates of their charter, as appears by Governor Cradock's letter to Mr. Endicott of that date (Mass. Chron. 142).

In July of that year, twelve gentlemen of "figure and estate," including Mr. Johnson, Mr. Winthrop, and Mr. Dudley, entered into a written agreement at Cambridge to remove to New England, "if the *government and patent* of the plantation *were legally transferred to remain with the emigrants*" (Chron. Mass. 14; Hutch. 19).

This proposition was communicated to the company on the 28th of the same July. "Learned counsel" were thereupon consulted as to the measure (1 Mass. Rec. 52). Besides this, Mr. White, one of the company, was a counsellor-at-law. The point of difficulty was, whether such a transfer could legally be made. What the opinion of counsel was, does not appear: but on the 29th August, at a meeting of the company, the question was discussed; "and it was then, by

erection of hands, fully decreed to be the general mind of the company, and their desire, that the government and the *patent* of the plantation should be transferred to New England, and settled there" (Hubbard, 123, 124). It was not, however, intended that the company should cease to have a local connection with England. They were to continue to manage a portion of its affairs there, as a joint-stock concern, for a while, through the agency of such of its members as did not emigrate. The seat of its government was to be removed to the home of the new Colony. Winthrop was accordingly chosen governor, and, with his company, arrived at Salem in June, 1630, bringing with him the charter, the duplicate having already reached Mr. Endicott.

But, as it is my purpose to speak only of the supposed virtue attached to the custody of the charter, I pass to 1633, when, upon the complaints of Gorges, Mason, and others, to the Privy Council, an order was passed by that body, staying the departure of sundry vessels then ready to sail for New England; "and that Mr. Cradock, a chief adventurer in that plantation, now present before the Board, should be required to cause the *letters-patent* for the said plantations to be brought to this Board."

It could only have been with a view to vacate the charter, or otherwise embarrass the Colony by the loss of its custody, that they thus required it to be brought before them; for, had it been simply to ascertain its terms, it could have been easily done by recurring to the public records in London.

In 1635, more systematic measures were inaugurated for overthrowing the government and charter of the Colony. These consisted of a writ of *quo warranto*, bearing date at Trinity Term, the 11th of Charles I., sued out by Sir John Banks, Attorney-General, from the King's Bench. Among the grounds on which it was alleged that the company had transcended their corporate powers, and violated their corporate obligations, were that the company in Lon-

don and other places, as also in several parts beyond the seas out of the kingdom, without any warrant, had used the liberties, privileges, and franchises therein enumerated, under fourteen specifications, covering most of the public acts which they had done as a corporation. Among these was that they kept one council without right, were resident in New England, and named and chose and swore whom they pleased to that council. For an obvious reason, therefore, the crown-officers seem to have purposely ignored the government in the Colony, and to have caused their writ to be served only upon such of the original assistants as remained in England; and the fact of such a writ having been sued out at all was not known to the governor or assistants of the Colony until after judgment in the action had been rendered.

Fifteen of the persons upon whom the notice had been served appeared in court; among whom was their former governor, Cradock. He entered his appearance, but made no answer; and a default was recorded against him. All the other fourteen denied their having usurped or used, or that they claimed any right to use, any of the liberties or franchises mentioned in the writ; and thereupon an order was passed prohibiting them from intermeddling in future.

Upon the default of Governor Cradock, a judgment was entered convicting him of the usurpation charged, "and that the said liberties should be taken and *seized* into the king's hands; the said Matthew not to interfere with, and be excluded, the use thereof; and the said Matthew to be taken to answer to the king for the said usurpation."

The rest of the company were outlawed, and no formal judgment entered against them.

I have been thus minute in the details of these proceedings, because it shows, that, if they were of any validity, here was such a *seizing of the charter* into the king's hands as would, by the law as now understood, have worked a suspension, at least, of the corporate functions of the body politic (Willock

Corp. 28); and that it is hardly to be conceived that so solemn a farce should have been played by the principal law-officer of the crown before the highest court in the realm, at no inconsiderable expense, if it was not supposed that every thing had thereby been accomplished which could be through the instrumentality of a judgment.

Something else seems to have been considered necessary to accomplish the end they had in view; and that was, to get possession of the charter itself. We accordingly find that the Lords of the Council, in April, 1638, although they were cognizant of the fact that the Attorney-General had sued out the writ of *quo warranto*, as they say, "against the patent," gravely adopted an order, which they communicated through their clerk in a letter to Governor Winthrop, in which, after reciting their former order to Mr. Cradock to cause the "grant or letters-patent for that plantation, alleged by him to be there remaining in the hands of Mr. Winthrop, to be sent over hither," "they strictly require and enjoin the said Winthrop, or any other in whose power or custody the said *letters-patent* are, that they fail not to transmit the said patent hither by the return of the ship in which the order is conveyed to them;" and threatening, "in case of any further neglect or contempt by them showed," to "move his majesty to re-assume into his hands the whole plantation."

To this letter the General Court replied in September, 1638, by a humble petition to the "Lords-Commissioners for Foreign Plantations," in which they deny any knowledge of the writ of *quo warranto*; and go on to say, "that, if our patent should now be taken from us, we should be looked upon as *runagates* and outlaws." Other expressions in their petition also indicate their opinion, that, the moment they gave up the possession of their charter, their civil and corporate existence would be at an end.

It is hardly necessary to add, that they did not send back their charter in obedience to this call. In Winthrop's Jour-

nal, the reason is given: "For it was resolved to be best not to send it, because then such of our friends and others in England would conceive it to be surrendered, and that, thereupon, we should be bound to receive such a governor and such orders as should be sent to us; and many bad minds, yea, and some weak ones, among ourselves, would think it lawful, if not necessary, to accept a General Governor" (vol. i. 269).

The Council of New England, it will be recollected, had solemnly surrendered their charter to the crown in 1635, in contemplation of having a General Governor appointed for the whole of New England and a portion of what is now New York and New Jersey, which was to have been divided into twelve Provinces; and the Massachusetts Charter was found to stand essentially in the way of accomplishing this project (1 Hutch. 50, 51). Besides, it should be borne in mind, that, as the law is now understood, it is extremely doubtful whether a municipal corporation can surrender its franchise; while, if it can, it is clear that it can only be done by the assent of a majority of the freemen of such corporation (Willock, 331, 332).

All that is necessary for our present purpose is to ascertain by their action, as well as from other historical facts, what estimate was attached to the possession of the charter, by the attempts of the government, on the one hand, to deprive the company of it, and the perseverance with which they clung to it as for their very existence.

Chalmers, — no willing witness for the Colony, — while he insists that the charter did not erect Massachusetts into a *Province* of the empire, to be governed by the acts of a Provincial Legislature; and that the first General Court, when Cradock was chosen Governor, in May, 1629, was the only legal one ever convened; and that this transfer of their charter was the first instance of a corporate body that ever sold itself (pp. 180, 181); and while he regards the judgment in the *quo*

warranto of 1635 as a seizing of the liberties of Massachusetts into the hands which conferred them, because they had been improperly exercised (p. 161),—admits that Attorney-General Sawyer gave it as his opinion, that they might transfer their charter and act under it in New England, and that the Chief-Justices, Rainsford and North, fell into the same *mistake* (p. 173).

From whatever cause, the government went on under the charter, though against the wishes of the government at home (1 Hutch. 210), who, it would seem, were uncertain what the respective rights and powers of the two were, under the existing circumstances; for we find the Lords of the Committee of Trade and Plantations, in 1678, calling upon the law-officers of the crown—Sir William Jones, Attorney-General, and Sir Francis Winnington, Solicitor-General—for an opinion as to the legal effect of the judgment in the *quo warranto* of 1635. And the conclusion to which these officers came was, that neither the *quo warranto* was so brought, nor the judgment thereon so given, as could cause a dissolution of the charter (Chalmers, 440).

The opinion of the General Court upon the subject may be gathered from Hutchinson's account of their measures, at the time Colonel Nichols and the other commissioners visited New England, in 1664, to hear and determine the matters of complaint therein existing. "And apprehending it," says he, "to be of great concernment that the patent, or charter, should be kept safe and *secret*, they ordered the Secretary to bring it into court, and deliver it, together with a duplicate, to four of the court (naming them), who were directed to dispose of them as might be most safe for the country" (1 Hutch. 211).

A new attack upon the chartered rights of the Colony was instigated by Randolph, the evil genius of New England, in 1683. A new writ of *quo warranto* was sent out, which he brought over, and, with it, copies of the proceedings which had been had against the charter of London. The magis-

trates were disposed to yield, and surrender the charter. The deputies refused to concur; and the result was, that, in Trinity Term of 1684, judgment in chancery was rendered against the Governor and Company of Massachusetts, — “that their letters-patent, *and the enrolment thereof*, be cancelled.”

Nothing seems to have been said upon either side as to what should be done with the instrument of the charter, or as to its custody. The subject would seem to have been purposely waived by both parties.

The Colony appears to have been disheartened, partly because so many of the corporations in England, including London, had been compelled to yield; partly from a want of harmony in their own counsels; and probably from a growing apprehension that their charter would not prove adequate to the multiplied interests and relations of business and civil polity of a Colony such as that of Massachusetts was rapidly becoming. At any rate, they yielded; though, as Chalmers says, the validity of these proceedings was questioned “by very great authority.” And the House of Commons, at a subsequent term, resolved that the warrants against the charters of New England were illegal and void (Chalmers, 415).

They still retained the parchment, which seems to have been carefully preserved; and at the time of the Revolution, in 1689, the officers chosen under it in 1686 resumed the government. But it must have been rather a matter of temporary expediency than an exercise of right; and the people saw, with a heavy heart, their good old charter, with its democratic powers and free tendencies, superseded at last and for ever by that of 1691.

The truth probably is, that they saw, that, if they could obtain a reversal of the judgment against their charter for irregularity in the proceedings, they would, almost from necessity, be obliged to transcend its powers, in order to carry on the government, and thereby subject themselves

to a new writ. And it is said, that, upon this ground, Treby, Somers, and Holt — the great lawyers then of England — advised against their adopting any measures to reverse the judgment (Chalmers, 415).

There is nothing, therefore, in the final dissolution of the charter, which leads us to suppose they ever changed their sentiments in respect to the value or importance of the instrument itself, as one of the grounds upon which their rights under it rested. And a recurrence to contemporary history tends to show that the sentiment was a general one, and that it had its origin in the general ignorance and uncertainty which prevailed — as well in the courts as at the bar, and with the people generally — as to what the law upon the subject was.

The charter of Plymouth was taken out by Governor Bradford in his own name. But, in 1640, it was thought best that it should be more directly brought within the control of the General Court; and, as is said in his History, he thereupon "surrendered the said letters-patent actually into the hands and power of the said court" (p. 374). It was done in open court; the charter being delivered into the hands of Nathaniel Souther, who had been authorized to receive it: and it was ordered, that Mr. William Bradford should have the keeping of the said letters-patent; and they were delivered to him in open court (1 Hutch. 468).

In 1685, it was resolved to commence proceedings against the charters of Connecticut and Rhode Island; but the latter tamely submitted, and surrendered her charter to the crown. Connecticut withstood the attack to the utmost of her power.

The *quo warranto* against that Colony was issued in July, 1685. Their charter had been granted in 1662; and at the first election under it, in October of that year, three persons had been chosen to *keep that instrument*.

The writ commanded the Governor and Company to appear in eight days. No notice, however, was ever had of

it by these until the 6th July, 1686, — a year after its issuing; nor was it formally served upon them until the 21st of that month, when it was served by Randolph. Another similar writ was issued in December, 1686, and was served upon the Governor. In the mean time, near fifty corporations had been deprived of their charters; and to these were added the charters of Massachusetts and Rhode Island. Nothing daunted, however, that Colony adhered to the exercise of their chartered rights: and though Andros — who had arrived on the 20th December, 1686, with a commission as Governor of New England — had written to them on his arrival, that judgment had by that time been entered against their charter, they continued to recognize the power of their former government; and in October, 1687, its officers assembled, as usual, at Hartford.

Andros came to Hartford while they were in session, accompanied by sixty of his troops, and met the Legislature, and demanded their charter. After much debate and hesitation, it was brought, and laid upon the table; when, as is familiarly known, the lights were blown out, and the charter was seized by Captain Wadsworth, and by him secreted in the famous Charter Oak, which, until so lately, stood as a monument to the memory of the actor in that singular scene.

Though Andros was thereby foiled of his attempt to seize the parchment itself, he assumed to regard the government under it as at an end, and appointed civil officers for the Colony; to whom, for the present, the people submitted. But it was altogether an involuntary submission: they still clung to their charter; and upon hearing of the deposition of Andros by the people of Boston and the surrounding country, in April, 1689, they resumed the government which had been thus suspended by violence.

In August of the next year (1690), a question was submitted to Ward, Somers, and Treby, three of the most

eminent lawyers in England,* in respect to the validity of the measure; and their answer was, "that the charter, not being surrendered under the common seal, and *that surrender duly enrolled*, nor any judgment of record entered against it, the same remained good and valid in law;" and that the corporation might proceed to act as if they had not submitted, or a governor had not been appointed.

With this explanation of the law, it is obvious, that, beyond the mere matter of convenience, the custody of the parchment on which the charter was written was of no practical consequence. If needed for purposes of proof, a certified copy from the record was all that was required; and, if carried away by the king's officer, it could not be construed into a surrender of its franchises.

And yet, by the loss of it, not only was it the general apprehension that the franchise would be lost, but that the rights of property which had been acquired under it would also be thereby divested.

Accordingly, when Governor Bradford surrendered the Plymouth Charter to the General Court, he expressly excepted certain parcels of land from the effect of the Act, although the affairs of the Colony had then been going on under that charter for eleven years.

The case of Nottingham, in England, was still more marked. The town-council voted to surrender the charter to the king; "and thereupon," says the reporter, "the mayor, pursuant to said order, did take out of the town-chest the said charter, and surrendered the same accordingly."

But a question soon after arose, whether the inhabitants, by that surrender, had lost the right of common in certain lands which they had theretofore enjoyed, together with

* Somers was made Lord Chancellor in 1697; and Ward and Treby, Lords-Commissioners of the Great Seal in 1700. Treby was afterwards Chief-Justice of the Common Pleas.

the franchise which they had derived through the charter (T. Raym. Rep. 482).

One of the most important cases in England, involving the power of the crown to disfranchise a municipal corporation, was that against the city of London, in the 13th of Charles II., 1683.

The Attorney-General, Finch, afterwards Lord-Chancellor Nottingham, and, after him, Robert Sawyer, appeared for the crown; George Treby, already mentioned, and, after him, Henry Pollexfen, afterwards Chief-Justice of the Common Pleas, for the city.

Edmund Saunders, a learned, and, in some senses, honest but most unscrupulous man, was made Chief-Justice of the King's Bench, in order to secure a judgment for the crown. He lived just long enough to accomplish his mission, and died on the morning of the day on which the judgment was pronounced.

One of the questions discussed in the case was, whether the franchise of such a corporation could be forfeited. The judgment was, that a corporation might be seized, and its charter avoided for things "misdone," or omitted to be done; and that the liberties and privileges and franchises of the city were taken and seized into the hands of the king.

And "thus," as the reporter adds, "was the metropolis of the kingdom deprived of its charter and privileges until 1688; when King James, terrified at the news of the Prince of Orange's intended invasion, thought fit to restore it (Oct. 6), and ordered Lord-Chancellor Jeffries to carry it back himself. Whereupon Sir George Treby was restored to his place of Recorder, and the rest of the magistrates according to the ancient constitution of the city" (3 Harg. State Trials, 628).

The validity of this judgment came directly before the King's Bench in the case of Sir James Smith, who had been an alderman in February, 1688. An Act of William and Mary, passed Aug. 1, 1689, required a certain oath to be

taken by all persons in office at the time of its passage; and, Sir James having failed to comply with the requirement of this statute, the question arose, whether he was, in fact, in office at that time or not. If the charter had been annulled by the judgment upon the *quo warranto*, he had never been elected to such office; and, as there had been an Act passed in 2d of William and Mary *restoring* to the city its ancient privileges, — in which Act the former judgment is recited, and declared to be illegal, — a question arose, whether Sir James ought to be restored to office.

In the argument of the case, it was assumed that the question, whether a corporation could be dissolved, had never been judicially settled; and it was contended, that, if it could, what had been done in the case of London was not such a dissolution. The court held that a corporation might be dissolved, but that a judgment of *seizin* could not be proper in such a case; for, if it was dissolved, to what purpose should it be seized? and that the judgment in this case did not dissolve the corporation.

As a consequence, they held that Sir James was duly elected an alderman, and should have taken the oath accordingly (4 Mod. Rep. 53).

But enough has been quoted from the histories, and books of reports, of that day, to show how very vague and uncertain and varying were the notions of the courts and lawyers and politicians of the time upon the subject of municipal corporations, and the nature of the grants by which they held their franchises. The judgment of one was declared futile by another; and the crown exhausted the power and ingenuity of its highest officers to get possession of a bit of parchment, under the idea that it could thereby annihilate the rights which it had solemnly granted, without the form even of a judicial trial.

No wonder, then, that, in this state of legal science, the Colonies of Massachusetts and Connecticut clung so strongly



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to the parchment and sign-manual, and the wax with its impress of the great seal of England; which, to their eyes, seemed like the ark of the covenant of old to the children of Israel, to guaranty to them the rights and individuality of a favored people. And, though it is now nigh two hundred years since it lost its prestige and its charm as a representative of power, no one can, even at this day, study the Charter of Massachusetts Bay in its original, as preserved at the State House, or its duplicate as seen at Salem, without associating with it, as an instrument, the early deeds and fame of the founders of the Colony.

Messrs. Adams, Brigham, and Chandler were appointed a Committee to resist, before the Legislature, any infringement of the Society's corporate name.

The meeting was briefly addressed on various topics by Messrs. Shaw, Ellis, Aspinwall, Bowditch, Deane, Gray, Clifford, N. Appleton, Paige, and Chandler.

SPECIAL MEETING.

The Society held a special meeting at their rooms in Tremont Street, on Tuesday evening, Feb. 1, to express their respect for the character and services of their late eminent associate, WILLIAM HICKLING PRESCOTT, who died in Boston, on Friday, Jan. 28, 1859.

Among other arrangements for the occasion, the beautiful bust of the lamented historian, by Richard S. Greenough, and copies of his various Works, presented to the Society by himself, and placed upon the officers'